

October 11, 2002

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, DC 20054

Re: *Ex Parte Presentation*
WT Docket No. 02-100

Dear Ms. Dortch:

By this letter, the Cellular Telecommunications & Internet Association ("CTIA") responds to the written *ex parte* presentation filed by the Local and State Government Advisory Committee ("LSGAC") on October 8, 2002. LSGAC takes the position that the issue involved in Cingular's Petition for Declaratory Ruling ("Petition") in the above-captioned docket is whether the Anne Arundel County ordinance ("Ordinance") should be preempted under Section 332 of the Communications Act of 1934, as amended (the "Act"). This is simply not the case. LSGAC ignores the fact that the Cingular Petition is founded on the Commission's well-established exclusive jurisdiction over radio communications under Title III of the Act.

The Petition asks the Commission to preempt the Ordinance because (i) it expressly regulates radio frequency ("RF") usage and interference and (ii) Sections 301-303 of the Act provide the FCC with exclusive jurisdiction over RF matters. Cingular expressly stated that it was not seeking preemption under Section 332. It is indisputable that Section 301 preserves the FCC's exclusive authority to regulate RF transmissions and interference through a national licensing scheme. Cingular cited substantial precedent where similar ordinances (including one that was virtually identical) were preempted under Sections 301-303.

Furthermore, the Commission should reject efforts to delay resolution of the Cingular Petition until the conclusion of the 800 MHz proceeding. As LSGAC is well aware, in the 800 MHz proceeding the Commission is moving pursuant to its exclusive jurisdiction under Title III of the Act to reduce interference in the 800 MHz band. The 800 MHz proceeding does not, and cannot pursuant to Section 301, contemplate state or local regulation of radio licenses and RF matters. Accordingly, the Commission should act expeditiously to preempt the Ordinance and should not defer action until the conclusion of the separate 800 MHz public safety proceeding.



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Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in purple ink, reading "Michael Altschul". The signature is written in a cursive style with a large, stylized "M" and "A".

Michael Altschul